

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.4084 OF 2007

ORDER

This writ petition is filed seeking to issue a Writ of Mandamus declaring the proceedings dated 31.03.2004 issued by the 1st respondent, wherein the petitioner was shown as 25% disabled, as arbitrary and illegal and not in consonance with the Orthopaedically Handicapped Certificate issued by the competent District Medical Board, M.G.H Hospital, Warangal, determining 65% permanent disability, and consequently to direct the 1st respondent to grant the disablement benefit to the petitioner on the ground that he is suffering from 65% permanent disability.

Heard Sri K. Srinivasa Varada Chary, learned counsel for the petitioner and Sri B.G. Ravinder, learned counsel appearing for respondents 1 and 2.

It is the case of the petitioner that he is working as a labourer under the control of the 3rd respondent and while working as such, he met with an accident on 29.06.2002, sustained serious injuries and he was treated at Nizams Institute of Medical Sciences, Hyderabad. Thereafter, the Medical Board of Warangal has assessed the disability sustained by the petitioner as 65% permanent disability and

based on which, he was given Orthopaedically Handicapped Certificate on 17.12.2003. Since the petitioner is a labourer working in the 3rd respondent, for claiming disablement benefit, he approached the 1st respondent to assess his disability, but the 1st respondent has assessed his disability as 25% instead of 65%. Aggrieved by the same, the present writ petition is filed.

Learned counsel appearing for respondents 1 and 2 contended that respondents 1 and 2 rightly assessed the disability of the petitioner as 25% and if at all the petitioner is aggrieved by the decision taken by respondents 1 and 2, the petitioner ought to have approached the Appellate Medical Tribunal under Section 54 -A of the Employees' State Insurance Act, 1948.

Learned counsel for the petitioner submits that if the disability as assessed by the M.G.M. Hospital, Warangal is taken as 65%, he would be entitled for substantial claim of more than Rs.1,00,000/- towards disablement benefit and since respondents 1 and 2 have incorrectly assessed the disability of the petitioner, he is made to lose that disablement benefit of Rs.1,00,000/-.

Having considered the rival submissions made by the learned counsel on either side, this Court is of the considered

view that at this length of time, it is not proper to direct the petitioner to approach the appellate medical Tribunal. The ends of justice would be met if the case of the petitioner is referred to Osmania General Hospital to assess his disability by an independent Medical Board to be constituted by Osmania General Hospital. Therefore, respondents 1 and 2 are directed to refer the case of the petitioner to the Medical Board to be constituted by the Osmania General Hospital for correct assessment of his disability. If the Medical Board so constituted by the Osmania General Hospital assesses the disability of the petitioner as 65%, then the petitioner would be entitled for disablement benefit for which he may pursue his remedies.

With these observations, the Writ Petition is disposed of.
No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

29th March, 2018
rkk

